WASTE — TENANT FOR LIFE WITHOUT IMPEACHMENT OF WASTE — WHETHER ENTITLED TO PROCEEDS FROM ORNAMENTAL TREES TAKEN BY THE GOVERNMENT. — The will of the testator created a tenancy for life without impeachment of waste with successive remainders over. During the possession of the life tenant ornamental trees were cut and taken by the government. Compensation was duly made to the trustees under the will. The trustees took out a summons to ascertain the disposition of the money. *Held*, that it be invested and held to the uses created by the will. *Gage* v. *Piggot*, 53 Ir. L. T. R. 33.

A tenant for life, although at law unimpeachable for waste, will nevertheless be restrained in equity from doing certain acts, termed equitable waste. *Vane* v. *Lord Barnard*, 2 Vernon, 738; *Dincombe* v. *Felt*, 81 Mich. 332, 45 N. W. 1004. See *Chapman* v. *Epperson*, 101 Ill. App. 161. To permit the retention of profits arising from an act which would have been enjoined would plainly be bad policy. Accordingly it has been held that an account of the proceeds of such acts will be ordered. *Garth* v. *Colton*, 1 Ves. 523; *Ormonde* v. *Kynersley*, 5 Madd. 369. A reversioner under such circumstances has even been allowed an action on the case, with the aid of a statute substituting such action for the old action of waste. *Stevens* v. *Rose*, 69 Mich. 259, 37 N. W. 205. But see *Belt* v. *Simkins*, 113 Ga. 894, 39 S. E. 430. It would seem, then, that a tenant for life unimpeachable for waste is in equity treated, in regard to equitable waste, much the same as is an ordinary life tenant in regard to legal waste. See *Honywood* v. *Honywood*, L. R. 18 Eq. 306, 311. The proceeds of timber which the former kind of tenant might rightfully cut may be retained by him. *Baker* v. *Sebright*, 13 Ch. Div. 179. If, on the other hand, he cuts timber which could not have been cut rightfully by such a tenant, — *e. g.* ornamental timber — he cannot have the proceeds. *Honywood* v. *Honywood*, *supra*. The fact that a trespasser cuts the timber will not change his rights. See *Anonymous*, Moseley, 237. The result will be the same where the timber is felled by accident or an act of nature. *In re Harrison's Trusts*, 28 Ch. Div. 220. The principal case logically applies the same rules when the government cuts under eminent domain. The same interests should be allowed to enjoy the proceeds as would have enjoyed the property; the accident of the cutting should not increase or lessen their interests. *In re Harrison's Trusts*, *supra*. The case is not without importance in the United States, since a tenant in fee subject to an executory devise is treated like a tenant for life without impeachment of waste. *Turner* v. *Wright*, 2 De G. F & J 234; *Gannon* v. *Peterson*, 193 Ill. 372, 62 N. E. 210.

WILLS — CONSTRUCTION — DISINHERITANCE BY EXPRESS CLAUSE IN WILL WITHOUT AFFIRMATIVE DISPOSITION TO ANOTHER. — A will which purported to dispose of all of the testator's property contained the provision that the testator's brother A "is not to have one penny" for a stated reason. Upon the lapse of certain legacies, A claimed as next of kin his share of the residue thus resulting. *Held*, that he may take. *Muir* v. *Archdall*, 19 New South Wales, 10.

According to the orthodox view, an heir cannot be excluded from taking by descent his share of the testator's estate except by a complete disposition of the property by will. *Duff* v. *Duff's Ex'rs*, 146 Ky. 201, 142 S. W. 242; *Bradford* v. *Leake*, 124 Tenn. 312, 137 S. W. 96. See 1 JARMAN ON WILLS, 6 ed., 335. This rule proceeds upon the theory that the testamentary power is merely a matter of statutory privilege, in derogation of the common law of descent and inheritance; and accordingly, that the testator has no greater powers than those granted by the statutes, which in terms refer only to affirmative disposition. See *Coffman* v. *Coffman*, 85 Va. 459, 461. See PAGE ON WILLS, § 21. This doctrince is applied where there is a partial intestacy due to the invalidity of testamentary dispositions. *Parsons* v. *Millar*, 189 Ill. 107, 59 N. E. 606. Another view holds that the exclusion of one or several of the next of kin might be regarded as a gift to the others by implication, so that in final effect

there is a complete disposition by will. *Bund* v. *Green*, 12 Ch. Div. 819; *Tabor* v. *McIntire*, 79 Ky. 505. This doctrine seeks to give effect to the testator's intention and yet to keep within the reason of the older view. As a matter of construction, the result of the orthodox view might often, but not always, be reached by the aid of the presumption in favor of heirs as in the principal case. *In re Plumly's Estate*, 261 Pa. 432, 104 Atl. 670; *Young* v. *Quimby*, 98 Me. 167, 56 Atl. 656. On principle, the intention of the testator should control, and negative words alone, even without positive disposition to others, should be sufficient to disinherit.

WILLS — CONSTRUCTION — WHETHER LIFE ESTATE OR ABSOLUTE INTEREST. — The testator by his will gave to his wife "all my property, both real and personal, to have hold and use for her own exclusive benefit so long as she shall live." The executor was the only other person named in the will. *Held*, that the widow took an absolute interest in the entire estate. *Gilham* v. *Walker*, 12 Queens. L. R. 9.

The absence of words of inheritance in a devise will not deprive the devisee of the fee in realty where it appears from the whole will that the testator intended to give an absolute interest. *Richardson* v. *Noyes*, 2 Mass. 56; *Defreese* v. *Lake*, 109 Mich. 415, 67 N. W. 505. In the principal case, however, the language would seem to point clearly to a life estate only. It is true that words similar in tenor to "have hold and use for her own exclusive benefit" have been construed to give the devisee power to alienate the fee. *McGuire* v. *Gallagher*, 99 Me. 334, 59 Atl. 445; *Newlin* v. *Phillips*, 60 Atl. 1068 (D. Ch.). But a life estate in real property, expressly created, will not — at least, if remaindermen are designated — be enhanced into a fee by reason of its being accompanied by an unlimited power of disposition. *Archer* v. *Palmer*, 112 Ark. 527, 167 S. W. 99; *Mansfield* v. *Shelton*, 67 Conn. 390, 35 Atl. 271. To distinguish these cases the fact may be seized upon that, in the principal case, no remaindermen are named; for such a designation is an indication of the intention of the testator that the first named beneficiary is to have a life estate only. *Hill* v. *Gianelli*, 221 Ill. 286, 77 N. E. 458. Nevertheless, the decision seems to be an extreme illustration of a mechanical application of rules of construction.

WILLS — HOLOGRAPHIC WILLS — REQUISITES — SUFFICIENCY OF DATE. — An illiterate man, ill in a hospital, wrote a letter on one sheet of paper, which, after corrections in spelling, was as follows: "4/ 12/ 17th. Maude Clarke, 351 Jones Street, Brookfield Apartments, Apartment 201. I leave her $2,000.00 more, cash money. Jack Olssen. My mind is clear. I leave her all. Jack Olssen." The lower court admitted this letter to probate as a holographic will, holding the dating to be sufficient, and admitting the testimony of the nurse that the entire letter was written at one time, and that it was delivered to the proponent for safe-keeping. *Held*, that there was no error. *In re Olssen's Estate*, 184 Pac. 22 (Cal.).

In a number of states a testamentary paper wholly in the handwriting of the testator is a valid will without attesting and subscribing witnesses. But the statutes controlling such holographic wills vary in some particulars. California, Louisiana, and Montana specifically require that such a will be dated. See 1915 CIV. CODE OF CAL., § 1277; 1912 REV. CIV. CODE OF LOUISIANA, Art. 1588; 1907 REV. CODE OF MONTANA, § 4727. To constitute a good date, the month, the day of the month, and the year must be given. *In re Anthony's Estate*, 21 Cal. App. 157, 131 Pac. 96; *Heffner* v. *Heffner*, 48 La. Ann. 1088, 20 So. 281. Place of execution is not part of the date. *Stead* v. *Curtis*, 191 Fed. 529. Usual abbreviations are valid. *In re Chevallier's Estate*, 159 Cal 161, 113 Pac. 130; *In re Lakemeyer's Estate*, 135 Cal. 28, 66 Pac. 961. But the omission